

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JERRY QUINN DAVIS,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 09-3313-CV-S-RED
MARTY C. ANDERSON, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his confinement at the Medical Center. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are without merit, it will be recommended that he be denied leave to proceed in forma pauperis.

Petitioner asserts that his due process rights are being violated because he has been held beyond a reasonable period of time for mental health evaluation.

In Davis v. Anderson, 09-3108-CV-S-ODS-H (W.D.Mo. August 11, 2009), the District Court denied petitioner leave to proceed in forma pauperis because, among other reasons, he is lawfully confined at the Medical Center for mental health evaluation. The Court noted that his most recent mental health evaluation report, dated June 15, 2009, indicated that petitioner was committed to the Medical Center, pursuant to 18 U.S.C. § 4241(d)(2)(A), following a judicial finding that he was not competent to proceed in his legal case. It was also noted that the Medical Center had requested an extension of the period of commitment for 60 days, which was ordered by United

States District Judge Gary A. Fenner, on August 10, 2009. This extension was based on the treating psychologist's opinion that while defendant is still not competent to stand trial, he has made progress, is voluntarily taking his medication, and regularly attends the competency restoration group. United States v. Davis, 08-03126-01-CR-S-GAF (W.D. Mo. August 10, 2009). The 60-day extension was granted from the date of that order. Accordingly, petitioner is currently legally confined for further mental health evaluation pursuant to court order. Therefore, it is clear that he is lawfully confined at the Medical Center at this time.

It must therefore be recommended that the petition herein for a writ of habeas corpus be dismissed without prejudice.

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, CHIEF
United States Magistrate Judge

Date: 9/1/09